business market in the Phoenix MSA comes from Qwest, not Cox.[73] In the northern portion of the Phoenix MSA, for example, Integra faces competition from Cox only in the provision of very high-end services such as 100-Mbps Ethernet service.[74] Moreover, from January to July 2009, Integra ported out numbers **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] to Qwest than to Cox.[75]

IV. THERE IS NO BASIS FOR GRANTING FORBEARANCE FROM UNBUNDLING REQUIREMENTS APPLICABLE TO LOOPS NEEDED TO SERVE RESIDENTIAL CUSTOMERS IN THE PHOENIX MSA.

As discussed above, one of the flaws in the Commission's prior analytical framework for UNE forbearance petitions has been its practice of including "residential telephone customers who have 'cut the cord'"[76] in its calculation of the incumbent LECs' market share in the wireline residential telephone market. The Commission has never provided any evidentiary basis for including mobile wireless services in the wireline product market in this manner, and Qwest has not offered any such basis in its petition. Once properly defined as excluding mobile wireless service, it is clear that there is not enough competition in the wireline telephone market to constrain Qwest's exercise of market power in that market. Nor is there sufficient competition in the wireline broadband market to justify forbearance.

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[73] *See* Fisher Declaration ¶ 12.

[74] *See id.*

[75] *See id.* ¶ 14.

[76] *4-MSA Order* ¶ 19.

A. The FCC Should Not Include Mobile Wireless Services In Either The Residential Wireline Telephone Service Or Wireline Broadband Service Market.

For purposes of reviewing UNE forbearance petitions, the FCC should define at least two separate residential product markets: wireline telephone service and wireline broadband service. The FCC should not include mobile wireless services when assessing competition in the residential wireline telephone market and more specifically, it should not include "residential telephone customers who have 'cut the cord'" in its calculation of competitors' market share of the residential wireline telephone market. There is simply no basis for this practice.

In the *Competitive ETC Order*, the Commission explicitly found that "the majority of households do not view wireline and wireless services to be direct substitutes."[77] Nevertheless, less than three months later, in the *4-MSA Order*, the Commission decided to include mobile wireless services in its competitive analysis of the wireline telephone service market "to the extent a household has elected to forgo wireline telephone service, rather than use mobile wireless services only as a complement to wireline telephony services."[78] The Commission's justification was that "this approach reasonably approximates the extent to which residential telephony customers view mobile wireless and wireline services as substitutes, and is the approach most consistent with the Commission's precedent."[79] Thus, the FCC's practice of including cut-the-cord mobile wireless customers in its forbearance analysis is based on merely a rough guess that, because some customers rely solely on mobile wireless service for their

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[77] *In re High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Order, 23 FCC Rcd. 8834, ¶ 21 (2008) ("*Competitive ETC Order*").

[78] *4-MSA Order* ¶ 20.

[79] *Id.*

telephone service, the FCC should include some measure of wireless competition in its analysis of competition in the wireline telephone service market.

Moreover, the precedent relied upon by the Commission—namely its statement in the *AT&T-BellSouth Merger Order* that "our product market analysis only requires that there be evidence of sufficient substitution for significant segments of the mass market to consider it in our analysis"[80]—misses the point entirely. As Dr. Michael Pelcovits has explained in recent forbearance proceedings, "The existence of some substitutability does not obviate the need to investigate whether a real-world firm (let alone a hypothetical monopolist used in the [small but significant and non-transitory increase in price] test of market definition [under the DOJ-FTC Horizontal Merger Guidelines]) can exercise market power."[81] Rather, as the Joint Commenters have discussed at length elsewhere, the relevant inquiry is whether a hypothetical monopolist could profitably increase prices paid by *existing wireline customers*.[82] Stated differently, the real

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[80] *In re AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, ¶ 96 (2007) ("*AT&T-BellSouth Merger Order*").

[81] Declaration of Dr. Michael D. Pelcovits, attached to Letter from Samuel L. Feder, Counsel for Cavalier Telephone & TV, to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 08-24 & 08-49, at 8 (filed April 21, 2009) ("Dr. Pelcovits Declaration").

[82] *See, e.g.*, Letter from Thomas Jones, Counsel for Cbeyond, Inc., et al., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 07-97, at 6 (filed May 7, 2008):

> [T]he Commission's explanation in the *Verizon/MCI Merger Order* and the *AT&T/BellSouth Merger Order* for treating mobile wireless services as belonging to wireline voice product market is flawed and cannot support that approach in the instant forbearance proceeding. *First* and foremost, the presence of *some* past increase in the number of customers that cut the cord does not mean that *enough* of the *existing* wireline voice customers view wireless and wireline services as substitutes to include mobile wireless in the same product market as wireline service (i.e., to prevent a monopolist serving all wireline customers from profitably imposing a significant and non-transitory rate increase on wireline customers). To begin with, the percentage of the population that has "cut the cord" in the past is not indicative of the demand elasticity for wireline service.

question is whether mobile wireless voice service effectively constrains Qwest's prices for the customers that have *not* cut the cord.

In fact, as the Joint Commenters explain in their Remand Comments, it is sometimes the case that a firm gains increased pricing power after it has lost a portion of its legacy market share to an alternative.[83] If that is the case in the residential wireline telephone market in Phoenix, Qwest has a *greater* ability to increase prices paid by the tens of thousands of wireline residential customers that it serves today than has been the case in the past.

In its Petition, Qwest fails to address the effect of wireless service on its prices for wireline service. This is so even though Qwest is the only entity that possesses the information required to conduct such an analysis. For example, Qwest has not shown that there is significant churn *back and forth* between its wireline service and mobile wireless service provided by other carriers due to changes in the relative prices of these services.[84] Qwest has not even demonstrated that it *considers* the prices or other characteristics of mobile wireless voice service when it establishes the prices or marketing strategy for its wireline telephone service. In the absence of proof that Qwest lacks the ability to set prices for wireline telephone service above

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> Mikkelsen White Paper at 8. The only relevant inquiry is whether mobile wireless service constrains the prices that Qwest charges its huge number of "remaining wireline customers." *Id.* at 9. Nor is the marginal increase in the percentage of total customers that subscribe solely to mobile wireless service relevant, because, again, the real question is whether a hypothetical monopolist in the provision of wireline service to *existing wireline customers* could profitably increase price. Such an increase in price might well increase the total number customers that cut the cord, but the increase in wireline prices would still be profitable if enough of the existing wireline customers retain that service.

[83] *See* Remand Comments at 15.

[84] *See* Dr. Pelcovits Declaration at 10 (stating that "the key empirical test is *how much switching* between wireline and wireless access is due to changes in the relative prices (i.e.[,] the cross-elasticity of demand)") (emphasis in original).

cost, the FCC must treat wireline telephone service as a product market that is distinct from mobile wireless voice service.

The Commission must also make clear that wireline broadband service belongs in a separate product market from mobile wireless broadband service. As Dr. Pelcovits found in recent UNE forbearance proceedings, "wireless broadband services are typically more expensive, slower, and less flexible than wireline broadband service."[85] Qwest has provided no basis for concluding that mobile wireless broadband service constitutes a substitute for xDSL or cable modem service. Moreover, the record in the Commission's National Broadband Plan proceeding confirms that wireless broadband services are not substitutes for wireline broadband in the majority of situations.[86]

B. There Is Little Facilities-Based Competition In The Relevant Residential Markets In The Phoenix MSA.

As the Joint Commenters have explained at length elsewhere, the FCC should consider only competitors that have deployed their own loop facilities in its forbearance analysis.[87] However, Qwest has failed to show that there are any competitors, other than Cox, with their own loop facilities that are capable of competing with Qwest in the provision of residential

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[85] Dr. Pelcovits Declaration at 16; *see also id.* at 16-19 (explaining why wireless broadband is not a substitute for most wireline broadband usage); *see also* Dr. Mikkelsen White Paper at 10 (explaining that even if the FCC somehow concludes that mobile wireless voice service belongs in the same product market as wireline telephone service, "[t]he Commission must still be careful not to use such a finding to infer that mobile wireless voice service belongs in the same relevant product market with wireline services for services other voice such as ADSL, DS1, and DS3 services").

[86] *See* Workshop Response of tw telecom, One Communications, Cbeyond and Integra, at 7-10, *attached to* Letter from Jonathan Lechter, Counsel to tw telecom et al., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 09-51, 07-245, 05-25 & CC Docket No. 98-147 (filed Sept. 15, 2009).

[87] *See supra* note 15.

telephone or broadband services in the Phoenix MSA. Indeed, other than Cox, none of the competitors that Qwest points to in the Phoenix residential market provides service via *its own* loop facilities. *First*, Qwest cites AT&T's and MCI's provision of residential telephone service in Phoenix *via* Qwest's QLSP product,[88] a product which Qwest readily admits " relies upon an unbundled loop."[89] As explained above, forbearance from the obligation to provide UNEs cannot be granted on the basis of competition that relies on UNEs.[90] *Second*, Qwest points to competition from "[o]ther CLECs [that] operate in the Phoenix MSA strictly as resellers of Qwest's retail residential services."[91] These resold services are obviously provided over Qwest's own facilities.[92] *Third*, Qwest relies upon competition from over-the-top VoIP providers, but

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[88] *See* Petition at 22 (stating that "AT&T offers service to many customers via the purchase of Qwest Local Services Platform ('QLSP')"); *see id.* at 23 ("Like AT&T, MCI offers the services based on the purchase of QLSP from Qwest via a commercial contract agreement.").

[89] *Id.* n.80.

[90] *See supra* Section III.C.3.

[91] Petition at 23.

[92] In addition, as the Joint Commenters explained in the 4-MSA proceeding, resale offers competitors no flexibility in the services they can offer. *See* Letter from T. Jones, Counsel for Cbeyond, Inc. et al., to Marlene H. Dortch, Secretary, FCC, *In re Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Dkt. No. 07-97, Attachment, at 4-5 (filed May 15, 2008); *see also* Gillan Associates, "The Irrelevance of Resale and RBOC Commercial Offers to Competitive Activity in Local Markets," May 2008, WC Dkt. No. 07-97, at 2 (filed May 15, 2008) ("Gillan Resale White Paper") (stating that "resale is nothing more than the re-offering of the retail service as designed by the incumbent" and that "[t]here is no meaningful ability for the purchasing carrier (that is, the reseller) to differentiate its product from that offered by the incumbent through innovation"). Furthermore, the "'retail-less-discount'" pricing of resale provides no constraint on incumbent LEC prices because higher incumbent LEC prices yield higher wholesale prices. *See* Gillan Resale White Paper at 2 ("[R]esellers can never impose a competitive constraint on the incumbent's prices . . . because the wholesale price moves up with any increase in the retail price. Consequently, the ILEC is able to simultaneously raise its rivals' costs in lock-step with any desired retail rate increase, effectively ensuring that rivals match – and, therefore, reinforce – the incumbent's rate increases."). *Id.*

such providers offer voice service over broadband connections provided by third parties. Thus, the fact that "Qwest DSL service subscribers . . . may order VoIP telephone service from a wide range of non-Qwest VoIP providers"[93] is entirely irrelevant to the Commission's forbearance analysis.[94]

Moreover, Cox's presence as the only competitor with its own facilities capable of competing with Qwest in the Phoenix residential market is almost certainly insufficient to prevent Qwest from charging prices for wireline services in Phoenix that are substantially above cost. As the Joint Commenters have explained in detail in previous forbearance proceedings,[95] more than one viable competitor to the incumbent LEC is required to prevent the harms to consumer welfare, namely supra-competitive prices, resulting from duopoly markets.[96] For this reason, retail competition from Cox in the Phoenix residential market is insufficient to justify forbearance.

Finally, Qwest's other "evidence" of retail competition in the Phoenix residential market is also unpersuasive. According to Qwest, the access line losses it has experienced are "perhaps the most telling example of the competition Qwest is facing."[97] But the FCC has already made

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[93] Petition at 25.

[94] *See also 4-MSA Order* ¶ 16 ("We do not include providers of 'over-the-top' or nomadic voice over Internet Protocol (VoIP) services in our competitive analysis because there are no data in the record that justify finding that these providers offer close substitute services.").

[95] *See, e.g.,* Joint Commenters' April 14th UNE Forbearance Ex Parte Letter at 18-25; *see also* Declaration of Dr. Stanley M. Besen, attached to Letter from Andrew D. Lipman, Counsel for TDS Metrocom, LLC et al. & Thomas Jones, Counsel for Cbeyond, Inc. et al., to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 08-24 & 08-49 (filed Apr. 23, 2009) ("Dr. Besen Declaration").

[96] *See* Remand Comments at 27.

[97] Petition at 5.

clear that this is simply not good enough. In the *4-MSA Order*, the Commission rejected Qwest's line loss data because such losses could be attributed to "many possible reasons . . . unrelated to the existence of last-mile facilities-based competition."[98] In the instant Petition, Qwest provides no reason for departing from this precedent. Moreover, the loss of access lines does not demonstrate that Qwest lacks market power over those customers who continue to subscribe to wireline telephone service today.

V. THERE IS NO BASIS FOR GRANTING FORBEARANCE FROM UNBUNDLING REQUIREMENTS APPLICABLE TO TRANSPORT FACILITIES IN THE PHOENIX MSA.

In considering whether to forbear from unbundling requirements applicable to interoffice transport, the Commission should assess the extent to which facilities-based competitors have deployed interoffice transport facilities. It is also important to keep in mind that the Commission's existing rules relieve Qwest of its interoffice transport unbundling obligations for (1) DS1 transport on any route between two so-called Tier 1 wire centers and (2) DS3 transport on any route where one of the wire centers is classified as either Tier 1 or Tier 2.[99] The tier system utilizes the number of business access lines and the number of fiber-based collocators in a wire center as proxies for the level of facilities-based competition in the provision of interoffice transport.[100] The rules are based on a prediction that competition is unlikely to develop on routes between Tier 3 wire centers (wire centers with fewer business lines and fewer collocators) and more likely to develop on routes where one or both of the end points are classified as Tier 1 or

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[98] *4-MSA Order* ¶ 30.

[99] *See* 47 C.F.R. 51.319(e).

[100] *See TRRO* ¶¶ 111-124.

Tier 2 wire centers (wire centers with more business lines or collocators). On such routes, Qwest has already been relieved of some or all of its unbundling obligations for interoffice transport.

Qwest has provided virtually no information regarding the extent to which facilities-based competitors compete in the provision of interoffice transport facilities. Integra undertook its own analysis of the interoffice transport market by examining the extent to which competitive wholesale providers offer transport at wire centers throughout the Phoenix MSA. Integra found that **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] Integra also found that **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] Thus, in those wire centers where competition in the provision of wholesale transport exists, Qwest has already been substantially relieved of its transport unbundling obligation. There is therefore no basis for eliminating Qwest's existing obligation to provide unbundled interoffice transport facilities in the Phoenix MSA.

VI. CONCLUSION

For the foregoing reasons, the Commission should deny Qwest's Petition.

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[101] *See* Fisher Declaration, Exhibit 1.

[102] *See id.*, Exhibit 2.

Respectfully submitted,

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(202) 303-1000

Attorneys for Integra Telecom, Inc., tw telecom inc., Cbeyond, Inc., and One Communications Corp.

ATTACHMENT A

REDACTED - FOR PUBLIC INSPECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix Metropolitan Statistical Area	)	WC Docket No. 09-135
	)	
	)	
	)	

DECLARATION OF BYRON S. CANTRALL
ON BEHALF OF INTEGRA TELECOM, INC.

1. I am the Vice President of Sales for Integra Telecom, Inc. ("Integra") of Arizona. In this role, I direct and provide strategy to our sales engineering, sales training managers, direct and indirect sales managers, and provide guidance to our Strategic Account managers. I am responsible for driving and retaining revenues primarily in the Phoenix, Arizona market. I have been with Integra Telecom for just over 8 months and have been in the competitive telecommunications industry for over 16 years.

2. The purpose of this declaration is to describe the network coverage that Integra needs to establish in a geographic market in order to achieve profitability in that market.

3. Integra must incur substantial fixed costs in order to enter a particular geographic market. For example, Integra must establish collocation arrangements, purchase equipment, and hire and train network engineers, technicians, sales associates, and other personnel.

4. In order to recover these fixed costs and ultimately achieve profitability, Integra must be able to serve a sufficient number of business customers in a given area. Furthermore, many of Integra's business customers have multiple locations within the same urban area. For example, Integra provides service to more than one location for at least 5.2 percent of its

customers in the Phoenix MSA. These customers represent at least 14 percent of Integra's revenues in Arizona. Multi-location customers generally demand that their service provider serve all of their locations within the urban area. For example, if a retail chain has locations in six towns in the Phoenix Metropolitan Statistical Area ("MSA") but Integra serves only two of those locations, it is unlikely that Integra will win that retailer's business. Significantly, Integra's multi-location customers' different locations are generally all located within the same MSA, although there are often substantial distances between such locations. This is generally true in the Phoenix MSA, although there are some multi-location customers with locations in both Phoenix and Tucson, Arizona.

5. In addition to the minimum number of business locations that it must serve in a geographic area, Integra determines the specific boundaries of the geographic areas it will serve based on a number of other factors. These include the locations of businesses and office parks and the proximity of fiber and central offices to those businesses and office parks, the amount of driving time it takes for Integra's sales associates and network engineers to reach customers, and the ability of those personnel to use the highway system to meet with customers and maintain Integra's network. In Integra's experience, MSAs tend to encompass these driving and communications patterns.

6. Based on Integra's analysis of the minimum number of business customers that it must serve in a geographic area as well as its analysis of the locations to which it can efficiently provide service in a geographic area, Integra has determined that, at a minimum, it must be able to serve the small and medium-sized businesses in one hundred (100) percent of the wire centers in the Phoenix MSA in order to reach and sustain overall profitability. We are working diligently to expand our service offerings into additional areas of the Phoenix MSA, but we

currently have full product offerings to only 40 percent of the MSA. In addition, our current market share as compared to available business opportunities is currently less than 5.5 percent within the Phoenix MSA. It is my view that with continued competitive offerings and the expansion and business growth within the MSA, Phoenix businesses would continue to have many choices and service offerings from a multitude of carriers. Restricting MSA-wide access to providers would hinder job growth, product development and unique service offerings to business clients in the Phoenix MSA.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Byron S. Cantrall

Dated: 9/21/09

ATTACHMENT B

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix Metropolitan Statistical Area	)	WC Docket No. 09-135
	)	
	)	
	)	

DECLARATION OF DAVE BENNETT
ON BEHALF OF INTEGRA TELECOM, INC.

1. My name is Dave Bennett, and I am Senior Vice President of Network Engineering and Corporate Operations for Integra Telecom, Inc. ("Integra"). In this role, I am responsible for Engineering and Operation of Integra's long haul and local network systems, including network planning, capital budgeting, equipment and vendor selection, capacity planning, and network management. I have over 39 years of experience in the telecommunications industry. Prior to joining Integra in 1999, I was Regional Manager of Operations with CenturyTel, Inc., where I was responsible for overseeing operations for over 400,000 access lines in ten states. Prior to that, I was a Regional Manager of Engineering with CenturyTel. Before joining CenturyTel, I was the Corporate Manager of Engineering with Pacific Telecom, Inc.

2. Integra is the fourth largest competitive local exchange carrier in the United States. It provides voice, data, and Internet communications to thousands of business and carrier customers in 11 Western states, including Arizona. Integra owns and operates a 2,200 route mile metropolitan area network and a 4,700-mile long haul network.

3. The purpose of this declaration is to (1) explain why, in most cases, it is not economically feasible for Integra to construct its own loop or transport facilities; and (2) describe the extent to which Integra has deployed its own loop facilities in the Phoenix Metropolitan Statistical Area ("MSA").

4. Integra would prefer to build, own and operate all of the facilities it uses to serve its customers. However, as a general matter, it is not economically feasible for Integra to self-deploy loop or transport facilities. This is especially true with regard to loops. In order to justify loop construction to a particular building, Integra must earn, at a minimum, an approximate monthly recurring revenue of **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** for services provided to customers in the building. This revenue requirement can be satisfied only if customers demand substantial volumes of high-capacity services. For example, because the monthly recurring revenue of a typical Integra customer is approximately **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] in order to justify loop deployment to a building. Integra is unable to meet this revenue requirement in the majority of commercial buildings in which it serves customers. Nor is it generally economically feasible for Integra to deploy transport along routes where traffic volumes are relatively low (*e.g.*, less than three DS3s of capacity).

5. Moreover, even where it is theoretically rational to construct loop or transport facilities, there are numerous obstacles associated with loop or transport self-deployment, including lack of space in existing conduits and municipalities' increasing unwillingness to permit access to public rights-of-way already overburdened by other utilities. In the Phoenix MSA in particular, the cost of loop deployment is higher than in other MSAs in which Integra

offers service. This is in part because some counties and municipalities in the Phoenix MSA charge substantial franchise fees for laying fiber. **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] These real world obstacles often prevent deployment of loop or transport facilities in locations that might theoretically support such construction.

6. As a result, Integra has constructed loop facilities to only **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** buildings in the Phoenix MSA as of August 21, 2009.[1]

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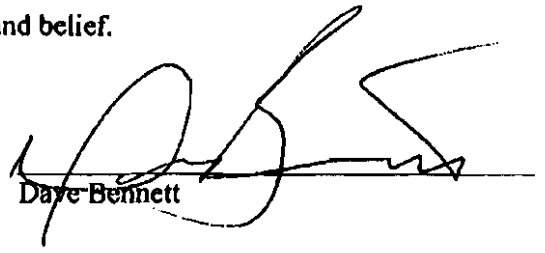
[1] In its July 1, 2008 *ex parte* letter in the Qwest 4-MSA forbearance proceeding, **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] *See* Letter from Thomas Jones, Counsel, Integra Telecom, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 07-97, at I (filed July 1, 2008).

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.



Dave Bennett

Dated: 7/21/09

ATTACHMENT C

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Metropolitan Statistical Area	)	WC Docket No. 09-135

DECLARATION OF SCOTT LIESTMAN
ON BEHALF OF TW TELECOM INC.

1. I am the Vice President of Business Operations for tw telecom inc ("TWTC"). I have been employed by TWTC since September 1997, and the majority of my time at tw telecom has been spent managing the business and operational analysis functions within the company. I graduated from University of Iowa with a Bachelor's Degree in Accounting in 1991 and a Master's Degree in Accounting in 1992.

2. The purpose of this Declaration is to describe: (I) the extent to which TWTC has or could viably construct its own transmission facilities to commercial buildings in the Phoenix MSA in which Qwest has requested forbearance, and (II) explain why TWTC and other competitors must rely on ILEC loops and why such reliance will increase in the foreseeable future.

I. There Are Few Locations To Which TWTC Has Constructed Transmission Facilities Or Could Construct Transmission Facilities In The Phoenix MSA

3. TWTC builds its own loop and transport facilities whenever it is efficient and cost-effective to do so. In fact, TWTC is likely deploying these facilities at a faster rate than any

other non-ILEC in the country. Unfortunately, for a number of reasons discussed herein, there are many locations where TWTC cannot economically construct its own loop facilities.

4. TWTC generally builds its local network in the parts of metropolitan areas containing the largest enterprise customers using fiber ring transport facilities. TWTC constructs rings to very large commercial buildings as part of the original construction of its local transport network in a metropolitan area. In the majority of cases, however, TWTC must build a stand-alone fiber lateral (*i.e.*, loop) facility to a building containing a business customer it seeks to serve on its own network after the customer has agreed to purchase service from TWTC.

5. In assessing whether it is cost-effective to deploy its own loop facilities, TWTC determines whether the revenue opportunity associated with a given building or a given customer is large enough to justify construction. To justify construction, the potential revenue must be sufficient to cover the total cost of construction and recurring expenses and simultaneously achieve a reasonable rate of return on investment. Costs vary based on the distance between TWTC's transport network and the customer location (the longer the lateral facility, the greater the deployment cost), costs associated with obtaining access to poles, ducts, conduits, rights-of-way and commercial buildings, the type of services provided (electronics for higher capacity services generally cost more than electronics for lower capacity services) and the customer's willingness to enter into a longer-term contract. After considering these factors, a small minority of customer locations meets tw telecom's revenue requirements. As a result, on a national basis, TWTC served only **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** of its customer locations entirely on its own network as of July 2009. As of July 2009, TWTC has been able to deploy its own loop facilities to only **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** of its customer locations in

Phoenix. Moreover, TWTC has only deployed loop facilities to a tiny fraction of the total commercial buildings in Phoenix. Based on aggregate numbers of commercial buildings with two or more DS1s of bandwidth demand in the Phoenix MSA obtained from GeoResults, TWTC has determined that, as of July 2009, TWTC had constructed loops to only **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** of the commercial buildings in Phoenix.

6. In addition, TWTC recently conducted a build-buy analysis, taking into account the aforementioned factors, for the Phoenix MSA in order to identify the buildings in those areas to which TWTC could potentially deploy loop facilities in the future. In conducting the build-buy analysis, we made two basic assumptions. First, we assumed that TWTC must earn an approximate monthly recurring revenue ("MRR") per building of **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** to justify construction of loop facilities under the best of conditions. This amount is the approximate MRR required to reach the target on-net building internal rate of return ("IRR") of **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** that TWTC uses in the marketplace. This assumption includes an estimated average cost of **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** including electronics, to deploy a loop facility in the Phoenix MSA. These costs reflect an average cost to build lateral facilities within one mile of our fiber network. We rarely construct these facilities beyond a mile, as it is generally cost-prohibitive, except where there are extraordinary revenue opportunities. Accordingly, the build/buy analysis was limited to buildings within a mile of our network. Hypothetically, the **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** revenue threshold can be met

in any number of ways using a combination of customer sizes and services. For example, a small business customer purchasing VersiPak, TWTC's integrated voice and data T1 product, spends an average of **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** per month with TWTC. Assuming that the customer signs a three-year contract, TWTC would need to provide services to ten other like customers in a building in order to procure a total MRR of **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**. In another example, a large business customer purchasing TWTC's Metro Ethernet solution spends an average of **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** per month with TWTC. Assuming that the customer commits to a three-year agreement and the customer has two locations (making TWTC's cost to build **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** TWTC would need to serve two additional like customers in one of the two buildings in order to come close to meeting the **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** revenue threshold. Practically speaking however, we require a firm commitment from one or several customers to justify the build and will not undertake a build until that commitment is secured. Thus in the majority of build scenarios there must be at least one larger business customer who has committed to a level of service that can meet our minimum MRR threshold to justify a build.

7. Second, TWTC assumed that it can win **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** of the revenue opportunity in a commercial building.

8. Using these assumptions, TWTC estimated that it might be able to construct loop facilities to buildings with **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] per month in estimated telecommunications spending. TWTC then relied on GeoResults data estimating the revenue spend in the commercial buildings with two DS1s of demand or more in the Phoenix MSA to determine the percentage of such buildings to which TWTC has not constructed its own loops ("non-TWTC buildings") but to which it *might* be able to do so in the future. Based on this analysis, TWTC determined that it might be able to build to only **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** of the non-TWTC buildings in Phoenix. The total number of such buildings to which TWTC has built or (assuming that barriers to entry are overcome) could theoretically build loops in each market is summarized in Table 3 below: **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

9. It should be noted that this build-buy analysis does not account for the fact, as explained, that TWTC generally cannot begin building its own loops unless and until potential customers in a given building in fact commit to purchasing the high revenue services that justify loop construction. This is why, even where TWTC has built its own transport facilities, there

remain numerous buildings to which TWTC could theoretically, but cannot practically, afford to build loop facilities.

II. TWTC And Other Competitive Carriers Rely Extensively On ILEC Transmission Facilities And Such Reliance Is Only Likely To Increase

10. In my experience, for those locations where TWTC cannot deploy its own loop facilities, it has little other choice but to rely on the ILEC's—in this case, Qwest's—loop facilities to reach its customers. This is because Qwest usually owns the only loop facility serving locations to which TWTC cannot efficiently deploy its own facilities.

11. TWTC's and other competitors' reliance on ILEC inputs to serve a very large number of customer locations is only likely to increase in the foreseeable future. This is because customers are increasingly demanding that carriers serve most or all of their locations. Thus, whereas a ten-location customer might previously have required that TWTC serve only its two largest locations, it is more likely today to demand that TWTC serve all ten of its locations. While TWTC might have been able to construct loops to the two largest locations that generate the most revenue, it is unlikely to be able to construct loops to the smaller locations, which can generate well under $1,000 per month in revenue. To reach those locations, TWTC is dependent on Qwest loops. If TWTC cannot obtain access to Qwest's loop facilities on reasonable terms and conditions, it cannot profitably serve all of the customer's ten locations, even if it had been economically feasible to construct loops to the larger locations. In other words, in order to justify constructing loops to multiple customer locations, it is more and more important that TWTC be able to purchase loops from Qwest on reasonable terms and conditions.

I declare under penalty of perjury that the foregoing is true and correct.

Scott Liestman

Scott Liestman

Dated: September 21, 2009

ATTACHMENT D

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix Metropolitan Statistical Area	)	WC Docket No. 09-135
	)	
	)	
	)	

DECLARATION OF STEVE FISHER ON BEHALF OF INTEGRA TELECOM, INC.

1. My name is Steve Fisher, and I am Vice President of Corporate Operations for Integra. In this role, I am responsible for managing Integra's long haul fiber network and network operations, including maintenance, repair and surveillance. Prior to joining Integra, in February, 2000, I was a telecommunications engineer and manager of Information Technology Services for the University of San Francisco.

2. The purpose of this declaration is to describe the extent to which (1) non-ILEC wholesalers offer loop and transport facilities in the Phoenix MSA; and (2) Integra faces intermodal competition from Cox in the retail business market in the Phoenix MSA.

I. Qwest Faces Little Competition In The Wholesale Market for Loop Facilities In The Phoenix MSA.

3. Because of its limited ability to economically self-deploy loop facilities, Integra must be able to obtain conditioned copper loops as well as DS0, DS1, and DS3 loops from a wholesale provider on efficient terms and conditions. In order to be considered a viable wholesale provider of loops for Integra, a wholesale provider must, at a minimum, meet certain basic requirements regarding the scope of its network and the sufficiency of its operations

support system ("OSS") capabilities. Unfortunately, no wholesale provider of loops in the Phoenix MSA other than Qwest comes close to meeting these requirements.

4. To function as a viable provider of loops, a wholesaler must meet three basic requirements. *First*, the wholesaler must have sufficient OSS such that it performs ordering, provisioning, maintenance, repair and billing in a timely and cost effective manner. If a wholesaler does not provide these capabilities, the quality of the services that Integra provides to its end-user business customers will deteriorate, and Integra's costs of providing service would likely exceed efficient levels. Either a deterioration of service quality or a material increase in Integra's costs would impede Integra's ability to compete.

5. *Second*, the wholesale provider must generally be able to serve all of the locations Integra seeks to serve in a given geographic area. This is because the fixed and recurring costs associated with establishing and managing two or more wholesale relationships are generally too high to enable Integra to rely on two wholesale providers for a significant volume of loops. For instance, if Integra were to order a significant number of loops from two wholesale loop providers, Integra would be required to incur the costs associated with establishing efficient electronic ordering and provisioning systems with two, instead of one, wholesale providers. Integra would also have to conduct monitoring of two, rather than one, wholesale providers' networks. In addition, Integra would incur the additional costs and experience the additional delays associated with reconciling multiple providers' bills and with using multiple providers' provisioning platforms. Establishing these duplicate capabilities and incurring these duplicate costs would make it extremely difficult, and in some cases impossible, to achieve the level of service required to compete in the marketplace while sustaining profitability in a geographic market.

6. *Third*, the wholesaler must offer loops at reasonable prices. Even if a competitive wholesaler has the highest quality OSS capabilities and an extensive network footprint, Integra could not rely on such a firm if its prices were too high to enable Integra to profitably offer downstream retail services at prices at or below those charged by Qwest. Unfortunately, no non-ILEC wholesaler in the Phoenix MSA meets these three criteria.

7. The incumbent cable provider in the Phoenix MSA, Cox, is also not a viable alternative to Qwest for the wholesale loops needed to serve Integra's business customers in Phoenix. To begin with, Cox only offers wholesale loop customers access to the relatively limited number of buildings served by Cox's fiber loop facilities. Cox does not offer wholesale loop customers access to Cox's coaxial loop facilities. Accordingly, Cox does not offer wholesale loop substitutes for the conditioned copper loops and DS0 loops that Integra purchases from Qwest. In the limited number of locations in which it offers wholesale loop facilities, Cox's prices are high. For example, **[highly confidential begin]**

[highly confidential end].

8. In addition, Cox's wholesale OSS capabilities have many serious limitations. For example, because the majority of Cox's customers are residential customers, it is Integra's experience that Cox is more likely to perform network maintenance during business hours, when residential usage is relatively low. Integra's business customers expect most network maintenance to be performed after business hours, when business usage is relatively low. Cox's insistence on performing maintenance during business hours can cause outages and other service degradations during the work day that business customers often will not tolerate. In addition, Cox does not permit wholesale customers to order loops via an electronic interface. It instead requires wholesale customers to fax or e-mail orders. In fact, Cox does not offer electronic

access to any OSS functions, including provisioning, maintenance or repair. Nor am I aware of any plans Cox has to develop such access. The absence of such access substantially diminishes the quality of service that Integra could provide via Cox's loops because ordering, provisioning, and repair are all likely to be slower and more error-prone and the detection of service problems is likely to be far slower than would be the case if Cox offered sufficiently robust electronic access to its OSS.

9. All of these factors diminish Integra's ability to rely on Cox as a primary wholesale provider of loops. As a result, Integra has submitted **[highly confidential begin] [highly confidential end]** Cox in Phoenix. Clearly, Cox cannot serve as Integra's main alternative to Qwest for wholesale loops.

10. Finally, Integra has not found any fixed wireless providers that have the capabilities to serve as alternatives to Qwest for wholesale loops in the Phoenix MSA. Clearwire does not currently offer Integra wholesale access to its network. Moreover, other fixed wireless providers cannot offer end-user connections at prices that are low enough or at levels of service quality that are sufficient to enable Integra to rely on those facilities to serve business customers.

II. Qwest Faces Only Limited Competition In The Provision Of Wholesale Transport Facilities In The Phoenix MSA

11. There are many routes between Qwest wire centers in which Qwest is the only provider of wholesale transport facilities. The Phoenix central offices in which Qwest is the only wholesale transport provider are listed in Exhibit 1 and the Phoenix central offices in which Qwest is not the only wholesale transport provider are listed in Exhibit 2 to this declaration.

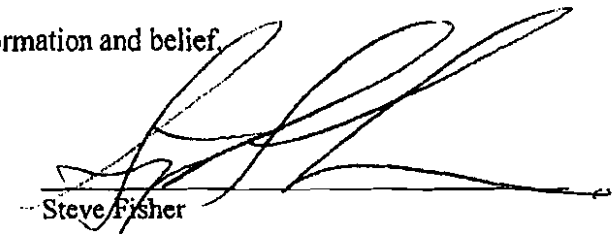
III. Integra Faces Substantially More Competition From Qwest Than From Cox In The Retail Business Market In The Phoenix MSA.

12. Integra faces relatively limited competition from Cox in the retail business market in the Phoenix MSA. In the northern portion of the Phoenix MSA, Integra faces competition

from Cox only in the provision of extremely high-end services such as 100-Mbps Ethernet service. Integra also faces some competition from Cox for lower-end retail business services in newly constructed commercial buildings along the eastern, southern, and western borders of the Phoenix MSA. These tend to be situations in which Cox seeks to justify the deployment of new transport and loop facilities so as to serve an entire building or development. However, the majority of competition that Integra faces in the retail business market in Phoenix comes from Qwest.

13. The total number of customers for whom Integra ports out telephone numbers to competitors provides an indication of the extent to which Integra faces competition from those competitors. From January 2009 to July 2009, Integra ported out numbers for **[highly confidential begin]** **[highly confidential end]** in Arizona to Cox and for **[highly confidential begin]** **[highly confidential end]** to Qwest.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.



Steve Fisher

Dated: Sept. 21, 2009

[Highly Confidential Begin]

[Highly Confidential End]

[Highly Confidential Begin]

[Highly Confidential End]